course there will be a trial of the resulting issue of fact. [Pet. 34–35.][2]

Pursuant to the decision of the Court of Appeals, the District Court, on April 10, 1950, issued a writ of habeas corpus (R. 11), to which respondents filed a return (R. 12–17) denying the allegation of the petition that it had been the "invariable practice" of the Immigration and Naturalization Service to stay the deportation of aliens in whose behalf private bills are pending (R. 15). In substantiation of this denial, the return set forth the cases of 58 enemy aliens who were deported during the pendency in the 80th Congress of a bill introduced for their private relief (R. 15, 16) and of another alien, one William G. Bishop, who was likewise deported while a private bill for his relief was pending in the same Congress (R. 16). The return further stated (R. 16–17):

> 11. It has long been the policy of the Immigration and Naturalization Service

[2] Judge Hand's concurring opinion (Pet. 35–37) agreed in substance with that of Judge Frank, except that, in the former's view, the absence of a denial of the allegation as to the "invariable" administrative practice would be immaterial—*i. e.*, the writ should properly be refused notwithstanding the alleged "invariable" practice—if the Attorney General should allege, by way of "confession and avoidance," that a deviation from such a practice was required "in the interests of the United States." And such an allegation by the Attorney General, according to Judge Hand, should require no proof—*i. e.*, the bare assertion by the Attorney General of the necessity for such a deviation should suffice in itself to require denial of the writ.

not to grant stays of deportation on the application of aliens in whose behalf private bills were pending in Congress where there were present in such case factors involving the welfare and security of the United States, and this relator's case is a case falling within that category because her entry into the United States has been adjudged to be prejudicial to the interests thereof.

12. While there have been other cases involving security factors, in which stays of deportation were denied during the pendency of private bills, the instant case wherein this alien was excluded from admission to the United States under 8 C. F. R. 175.57, because her entry would be prejudicial, is the first case of its specific kind wherein an application was made for an administrative stay of deportation during the pendency of a private bill.

13. In ruling upon the said application for a stay of deportation, the Attorney General and the Commissioner of Immigration and Naturalization for the first time considered the wisdom and advisability of granting such stay of deportation to an alien whose entry was adjudged prejudicial under 8 C. F. R. 175.57, and in their discretion they determined that the relator should not be the beneficiary of such administrative action.

Accordingly, it was stated (R. 16):

In denying a stay of deportation to the relator during the pendency of the said

private bill, neither the Attorney General nor the Commissioner of Immigration and Naturalization has singled her out for unusual treatment.

On or about April 20, 1950 (see R. 27), petitioner filed a traverse to the return (R. 18–27) averring that the deportation of the enemy aliens referred to in the return while a private bill for their relief was pending could not be considered as negativing the existence of the alleged "invariable" administrative practice on which the petition for habeas corpus was predicated, because those cases involved the "removal of alien enemies," whereas petitioner's case is a "deportation proceeding under the immigration laws" (R. 20–24). The traverse also stated that the private bill for the relief of the 58 aliens referred to in the return was "dead for all intents and purposes" when the removal of those aliens was effected, nearly a year after the introduction of the bill, though during the same Congress in which the bill was introduced (R. 24–25).[3]

[3] It was also stated in the traverse that a second bill for petitioner's relief (H. R. 7614), phrased in substantially the same language as the Senate bill, had been introduced in the House of Representatives in March 1950; that this bill had been reported favorably to the House Committee on the Judiciary by the Subcommittee on Immigration; and that the Committee on the Judiciary had reported the bill favorably to the House (R. 18–19). According to the petition for a writ of certiorari, this bill was passed by the House on May 2, 1950 (Pet. 9, 14).

On May 8, 1950, the District Court (Clancy, D. J.) dismissed the writ (*R.* 36). In an accompanying opinion (*R.* 33–35), he said:

> This matter was remanded to the District Court to permit the respondent to set up in his return as an issue in the case the exercise of discretion in the deportation of other aliens after a bill for their relief had been introduced in Congress and pending its passage. The respondent has served a return in which he has set forth the names of seventy [sic; *cf. supra*, p. 4] aliens in whose cases such action has been taken while bills for their relief were pending passage. The fact of such action is not disputed by the petitioner but she attempts to distinguish those cases as precedents by showing that those cases involved removals whereas hers is an admission case. The difference is not disputed but we are unable to discern its importance. The question is whether a discretionary power to deport was exercised while legislation was pending and whether the instances of earlier actions involved admissions or removals, the right exercised was the same. * * *
>
> The return of the Government officials calls to our attention that this case is sui generis, that it is the first case involving the exclusion for security reasons of an application [sic] for admission wherein

during the pendency of a bill in Congress application for an administrative stay of deportation has been made and that this is the first time that the Attorney General and Commission of Immigration and Naturalization have considered the wisdom and advisability of granting such a stay in a security exclusion case though a bill was pending in Congress. Petitioner has not disputed these allegations and her distinction of the precedents as involving deportations emphasizes the poverty of her case. Any comparison of a security exclusion case and a removal security case would certainly add strength to the Government's position.

Petitioner again appealed to the Court of Appeals, which on May 16, 1950, affirmed the order of the District Court (R. 42), the *per curiam* opinion reading simply, "Order affirmed on opinion below" (R. 41). The petition for a writ of certiorari seeks review of this judgment.

We submit that the judgments below are clearly correct and that the petition for a writ of certiorari presents no question meriting further review by this Court. Certainly the fact that a bill designed to change the law in so far as it affects a particular person is pending before Congress does not make it unlawful for the administrative officials to enforce the law as it stands. Whether or not proposed legislation will

pass is always speculative.[4] The whole basis of the instant proceeding is the charge that, because of an alleged "invariable" administrative practice whereby the Attorney General and the Immigration and Naturalization Service have deferred the expulsion of aliens ordered deported, in whose behalf private relief bills are pending in Congress, petitioner has been arbitrarily and capriciously singled out for different treatment in this respect. The sole ground of the Court of Appeals' first decision, of March 28, 1950, reversing the District Court's original order denying the petition for habeas corpus without further proceedings, was that the writ was issuable in view of the state of the pleadings at that time—*i. e.*, in view of the absence of a denial by the Government of this allegation as to the "invariable" administrative practice. The writ accordingly issued, and the Government denied the allegation as to the administrative practice, citing the cases of many enemy aliens who were deported while proposed private legislation for their relief was pending, and pointing out, in addition, that petitioner's case is the first of its kind—exclusion of an alien for security reasons—in which the Attorney General and the Immigra-

[4] The enforcement at this time of the order excluding petitioner from entry would not, of course, preclude Congress from making special provision for her admission to the United States if it should see fit to do so.

tion and Naturalization Service have had occasion to exercise their discretion as to whether or not to stay execution of the order of permanent exclusion in the face of the pendency of private relief bills. Petitioner's traverse merely sought to distinguish enemy-alien removal cases from her case, which she conceives to be just an "ordinary deportation case" (Pet. 13). Judge Clancy's opinion (*supra*, pp. 7–8) which the Court of Appeals adopted, adequately demonstrates, in our judgment, the insufficiency of the traverse as a pleading in the face of the Government's return. We agree with him that petitioner's "distinction of the precedents * * * emphasizes the poverty of her case. Any comparison of a security exclusion case and a removal security case would certainly add strength to the Government's position" (R. 34–35).

The petition for a wirt of certiorari should, it is respectfully submitted, be denied.

PHILIP B. PERLMAN,
Solicitor General.
JAMES M. MCINERNEY,
Assistant Attorney General.
ROBERT S. ERDAHL,
PHILIP R. MONAHAN,
Attorneys.

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